

Caseflow Management Committee
Meeting Minutes
(Unofficial Until Approved)
Supreme Court, Bismarck
May 15, 2015

Members Present

Surrogate Judge, Allan Schmalenberger, Chair
Kathy Ouren, ECJD Clerk of Court
Sarah Cannon, Attorney, via phone
Merylee Castellanos, Unit 1 Trial Court Administrator, via phone
Judge Dann Greenwood
Jay Greenwood, Attorney, via phone
Judge Gary Lee, via phone
Judge John McClintock, via phone
Judge David Nelson
Carolyn Probst, Unit 4 Trial Court Administrator
Donna Wunderlich, Unit 3 Trial Court Administrator

Not Present

Jean Delaney, Attorney, Indigent Defense
Darcie Einarson, Attorney
Gabrielle Goter, Attorney
John Grinsteiner, Judicial Referee
Judge Jon Jensen
Judge Steven Marquart
Rod Olson, Unit 2 Trial Court Administrator
Judge Thomas Schneider
Judge Jay Schmitz

Guests

Andrew Frank, Attorney
Patti Tobias, National Center for State Courts
Nial Raaen, National Center for State Courts

Staff Present

Scott Johnson, Assistant State Court Administrator for Trial Courts
Lana Zimmerman, scribe

Judge Schmalenberger called the meeting to order. **A motion was made by Donna Wunderlich to approve the March 7, 2014, minutes. The motion was seconded by Kathy Ouren, motion carried.**

Model Time Standards & Docket Currency

Scott Johnson introduced Patti Tobias and Nial Raaen from the National Center for State Courts. They are consultants specifically for Docket Currency and Caseflow Management. Patti was the State Court Administrator for the State of Idaho. Nial previously served with the State of Michigan as the Director for Trial Court Services.

Background: Administrative Rule 12 began in 1980 with no major revisions since that time. There have been some new and interesting developments in time standards since 1980.

Patti Tobias updated the committee on several developments with model time standards for state trial courts. The overview was prepared for Oregon court leaders about a year ago. The Model Time Standards publication is a 2-year national effort to review experience with expert time standards and the needs of the public in our state courts. A steering committee was appointed consisting of the Conference of State Court Administrators, Chief Justices, and a number of judges and representatives from the American Bar Association. The National Center for State Courts provided the support and guidance needed.

Earlier, the ABA adopted time standards and many state courts subsequently, adopted their own set of time standards. Time standards recognize the public's expectation of immediate action and the ability to conduct business electronically. Overall, the work culminated into a single set of model standards being adopted by the Conference of State Court Administrators and the Conference of Chief Justices in 2011. Each state court was urged to review the standards and use them as a basis for reviewing its own practices and procedures; statutory time periods, jurisdictional structure, who handles what kinds of cases, what are the demographic and geographic factors that impact timely case processing and what resources are available. The publication was set out in the broad categories of civil cases, criminal cases, family law cases, and juvenile and probate cases for each state to consider.

Generally, the standards are applied from the date of the filing of the action to the date of disposition or entry of judgement. The standards are built in a tripartite model reflecting the different case processing and case management that occurs. The time standards provide a first year time period in which 75% of the cases should be disposed of within a certain time period. It also provides that a 2nd tier of 90% resolution, occur. The 3rd tier of 98% resolution, occur. For most of the case types, the standards recognize there are always going to be exceptions. Time standards and setting expectations are a starting point for developing caseflow management plans and looking at the practices and procedures in each individual district. Time standards is a way to manage scarce resources, and sets expectations for the public, attorneys and others that come into contact with our courts. There is also a need to measure how things are handled in relation of the standards and making adjustments. The Model Time Standards publication offers suggestions on how best to proceed on a local and statewide level.

Nial Raaen has been involved in caseflow management and the National Center for State Courts has been involved in numerous projects. He noted that he is finishing up a Bureau of Justice Assistance Project which assists with training and tactical systems on felony caseflow management. His first exposure with caseflow management was with trial courts and the

Supreme Court of Michigan. The court administrator's office directed the local courts to develop a Caseflow Management Committee. This was part of a larger effort to educate the judiciary and the court administration about caseflow management. The committee convened in the Washtenaw County (Ann Arbor area west of Detroit, Michigan). There was quite a bit of interest from the circuit judges in caseflow management. The local committee was very productive in terms of bringing together the right individuals on how to improve caseflow management. A process was built in for regular consultation with the State Bar Association which assisted greatly with keeping caseflow management "alive". There were 40 different case management systems in the state and there was an effort to try and get all of the vendors to provide CourTool (a product of the National Center for State Courts) information. The regional administrators reviewed the quarterly reports which highlighted cases past guideline time frames. If the courts needed assistance they sought additional judicial resources. The Michigan Administrative Office of the Courts (AOC) embraced the idea of performance-based measures and caseflow management information is a sub-set of trial court performance measures. Some states are just starting with performance standards and how to approach the issues depends on the environment and culture.

Patti Tobias described the recommendations for modifying and implementing time standards in Idaho. Judge Schmalenberger asked how things are handled in other states when informing trial judges of the status regarding time standards.

She explained that most states are providing a monthly report. Some states make a data dashboard available that track all of the cases and their timelines. Take felony cases for example; some states will provide a monthly report that explains pending cases which are assigned to an individual judge that denotes 25%, 50% and 90% are within a certain timeline. Typical reports include active age of pending cases by the different breakouts and cases disposed will give the average age. Odyssey may be able to produce a report regularly rather than twice a year. This will give the judges and court administrators an enhanced ability to monitor cases.

Scott Johnson will provide a copy of a dashboard developed and utilized within the State of Wisconsin. It is a realtime dashboard for judges showing case information. Adopted model time standards were found to be useful and case tracking/dispositions improved when the judges had the dashboard available for daily use on their desktop and in the courtroom. If states such as South Dakota, Idaho, and others are already working with CourTools, it would be great to see what they are doing with our own goals in mind.

Judge Schmalenberger is proposing that the committee to look at AR12 and the model time standards while looking toward the concept of creating a dashboard. He recommends the easiest way to do this would be to create a sub-committee to pursue it. The sub-committee will report back to this committee.

Committee member (and attorney) Jay Greenwood has never had the option to look at the docket currency report. He asked whether Odyssey could provide a service that would allow the attorney to take information directly from it?

Judge Schmalenberger explained that Odyssey has the ability to create queries and reports that can be produced to a certain extent. Judge McClintock suggested looking at other states that utilize Odyssey to see how they are generating the reports from their system.

A motion was made by Judge Nelson to appoint a sub-committee. Motion was seconded by Kathy Ouren, motion carried.

If anyone is interested to participate as a member of the sub-committee please let Scott Johnson know.

Southwest Judicial District (SWJD) Caseflow Management Plan

Please refer to the SWJD Caseflow Plan. While there has been a plan in place for many years, it was never compiled into one specific document. As with the other plans that have been presented, the goal of every caseflow plan is to use differentiated case management and a calendaring system that is going to assign the cases fairly among the judges and coincide in accordance with AR12. In the SWJD, there are three judges that cover 8 counties, 80% of the workload is in 2 counties that have county seats within 25 miles of each other (Stark and Dunn). They use an individual and master calendar system with a 3 week rotation of judges. The master calendar in Stark county includes 66% of the workload in the district, which includes a judge being on master calendar in Stark county 4 days a week. The judge is on master calendar in the rural counties on Thursdays of the master calendar week. On the first Thursday of the month, the judge will rotate out and travel to Adams and Hettinger counties. On the second Thursday of the month, they travel to Bowman and Slope counties and on the third Thursday of the month, they travel to Dunn County. On the fourth Thursday, they travel to Golden Valley and Billings counties and on Fridays, they are in Stark County covering master calendar duties.

Master calendar scheduling requires that clerks in each county fill in the time slots and schedule many of the master calendar issues in the rural counties. The criminal trials are all scheduled at first appearances, but the rest of the trials are all scheduled by the calendar control clerk. Judges are assigned differently depending on case types. In criminal cases, if there is a judge on master calendar when someone has their initial appearance, the case is then assigned to that judge and the trial dates are then provided at that appearance. There is significant block scheduling on the master calendar in Stark county, as well.

In 2001, Judge Schmalenberger issued an order that delineated how cases are assigned. The bond schedule used in the district allows the arresting officers to collect a pre-set amount of bond and release people that meet required conditions. The district also utilizes a notification and acknowledgment of rights form, which facilitates first appearance and bond hearings in Stark county. The SW multi-county correctional center is located in the SWJD. This is a privately funded entity that contracts with all of the counties for jail services. They have IT capabilities and judges will arraign and set bond for the prisoners that have been arrested and unable to post bond or are not allowed to post bond.

In the SWJD, there has been a culture of agreement by counsel that two attorneys can call each other and request a continuance together. If a continuance is requested, they need to work with

the calendar control clerk to find an alternative date before a continuance is granted. Due to the difficulty getting back on the schedule this practice has shortened up time frames.

Media entities are not allowed in the courtroom unless the judge issues an expanded media order. If the order is issued, media representatives are not allowed to question people in the hallways outside the courtrooms. They must allow parties the privacy in the hallways specifically when a case is deemed a “high profile” trial.

In Odyssey, clerks can use docket currency reports, time standard tickler reports, cases without activity reports, event listing reports and the cases without future hearings report are scheduled.

Minority Justice Implementation Committee Jail Data

Andrew Frank reported that the Minority Justice Committee has been working to implement recommendations from a study completed by the Commission to Study Racial and Ethnic Bias in Courts completed in 2012. The committee has been looking at areas of the system to see if there are disparities and/or the perception of bias.

Please refer to the County Jail Data Requests Summary. One of the primary areas to review is jail pre-trial stays. In other states, there are disproportionate minority populations in jail pre-trial. Andrew has been asked to look at county jail data starting with the largest counties down to smaller counties. Areas reviewed within available jail population data include the numbers of inmates that are incarcerated pre-trial, length of stay and the population demographics. Accuracy of the data can be attributed to the ability for individual jail systems to track requested data as well as the response rate to queries for the data.